

REMARKS

Amendments to the Specification

The specification has been amended herein to update the Related Applications paragraph and to reference the various parts of Figures 1-26. No new matter has been added.

Claim Amendments

Claim 9 has been amended herein. New Claim 39 has been added herein. Support for new Claim 39 can be found throughout the specification and in Claim 9 as originally filed. No new matter has been added.

Rejection of Claim 9 Under 35 U.S.C. §102(a)

Claim 9 is rejected under 35 U.S.C. §102(a) as being anticipated by Zhao et al.

The instant application claims priority to U.S. Patent Application Serial No. 09/712,898 which claims the benefit of U.S. Provisional Patent Application Serial No. 60/201,578, filed on May 1, 2000. Therefore, Zhao et al. is not eligible as prior art. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claim 9 Under 35 U.S.C. §102(e)

Claim 9 is rejected under 35 U.S.C. §102(e) as being anticipated by Agrawal et al.

Claim 9 has been amended herein to recite a CpG dinucleotide wherein the C is a non-natural pyrimidine nucleotide. New Claim 39 recites an oligonucleotide having a non-natural purine nucleotide. Agrawal et al. fails to teach a CpG dinucleotide wherein the C and/or the G are a non-natural nucleoside. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 9-11 Under 35 U.S.C. §103(a)

Claims 9-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Zhao et al. in view of Schwartz et al.

Applicants respectfully disagree. As state above, Zhao et al. is not eligible as prior art. Schwartz et al. exclusively describes immunostimulatory sequences in which the C residue of a CG dinucleotide is modified by addition to C-5 and/or C-6 of an electron withdrawing (hydrogen

bond acceptor) group. In fact, Schwartz et al. specifically defines "modified ISS" in this manner. Schwartz provides no teaching or suggestion to further modify the oligonucleotide with an immunostimulatory moiety. Therefore, Schwartz fails to teach the claimed invention.

Furthermore, contrary to the assertion in the Office Action, it would not have been prima facie obvious for one of skill in the art to use a non-natural pyrimidine and/or purine nucleoside to modify the CpG dinucleotide. Therefore, one skilled in the art would not have had a reasonable expectation of success for modifying the CpG dinucleotide. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 9-11 Under 35 U.S.C. §103(a)

Claims 9-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Zhao et al. in view of Schwartz et al.

Applicants respectfully disagree. As state above, Agrawal fails to teach or suggest the claimed invention. Furthermore, as discussed, Schwartz fails to provide the teachings that Agrawal lacks. Reconsideration and withdrawal of the rejection are respectfully requested.

Double Patenting

Claims 9-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 14 of copending Application No. 10/694,383.

The instant application and the '383 application are both divisionals of parent Application No. 09/965,116 (now US Patent No. 7,262,286). Therefore, restriction between these two applications is improper. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 9-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 23 of copending Application No. 11/274,043.

As stated by the Examiner, this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Please note that U.S. Application No. 11/274,043 is the later filed application.

Therefore, if this provisional double patenting rejection is the only remaining rejection in the application, Applicants request that the Examiner withdraw the rejection in the instant

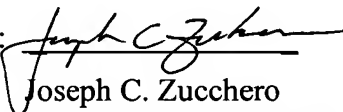
[earlier filed] application thereby permitting this application to issue without need of a terminal disclaimer. (See MPEP §804(I)(B)). Applicants will then consider filing a Terminal Disclaimer or take any other action deemed necessary in the later filed, copending application.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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